

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

CASE NO. 19-md-02913-WHO

This Document Relates to:
All Class Actions

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT AND JUDGMENT**

Class Plaintiffs¹ have moved the Court for final approval of a proposed class action settlement with Defendant JUUL Labs, Inc. (“JLI”), on behalf of itself and the Released Parties, the terms and conditions of which are set forth in the Class Settlement Agreement. ECF No. 3745-4 (revised agreement). The Court previously granted preliminary approval to the proposed settlement and directed notice to the Settlement Class. ECF No. 3779.

For the reasons described more fully below, the Court GRANTS final approval of the Settlement.

I. BACKGROUND

Class Plaintiffs and JLI seek to resolve economic loss claims (other than claims asserted in *In re Juul Labs, Inc. Antitrust Litigation*, Case No. 3:20-cv-02345-WHO that arise from alleged anticompetitive conduct) asserted against JLI and the Released Parties involving the manufacture, labeling, marketing, and sale of JUUL—an electronic nicotine delivery system consisting of an electronic cigarette and a nicotine pack called a JUULpod. Class Plaintiffs allege that Defendants created, marketed, and sold JUUL by misleading the public about the addictiveness and risks of JUUL, and by trying to expand the market by capturing and addicting individuals—specifically minor users—who had not previously used tobacco or e-cigarette products. *See In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, 497 F. Supp. 3d 552, 574 (N.D. Cal. 2020).

Bradley Colgate and Kaytlin McKnight filed the first complaint in this litigation against JLI on April 26, 2018. Case No. 2018-cv-2499 (N.D. Cal.) (“Colgate”) ECF No. 1. The Court denied JLI’s motion to compel arbitration and for the most part denied multiple motions to dismiss these plaintiffs’ amended complaint. *See Colgate* ECF Nos. 40, 41, 66, 82, 98, 99, and 139; *Colgate v. JUUL Labs, Inc.*, 345 F. Supp. 3d 1178, 1187 (N.D. Cal. 2018); *Colgate v. JUUL Labs, Inc.*, 402 F. Supp. 3d 728 (N.D. Cal. 2019). Other individual and class cases were subsequently filed in this Court and in other jurisdictions. The Judicial Panel on Multidistrict Litigation transferred all these cases to this Court for pretrial purposes on October 2, 2019. Plaintiffs filed a

¹ The capitalized terms used in this Order shall have the same meaning as defined in the JLI Class Settlement Agreement and Plan of Allocation except as otherwise noted.

consolidated class action complaint on March 1, 2020, and then amended it on April 6, 2020. Defendants again moved to dismiss, and the Court denied the motions in part and granted the motions in part with leave to amend on October 23, 2020. *In re JUUL Labs.*, 497 F. Supp. 3d at 677-78. Class Plaintiffs filed a second amended consolidated class action complaint on November 12, 2020, ECF No. 1358, and the Court denied Defendants' motions to dismiss that complaint on April 13, 2021. *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 533 F. Supp. 3d 858, 861, 881 (N.D. Cal. 2021).

Discovery proceeded prior to, during, and after the motions to dismiss. Defendants produced millions of pages of documents, and Plaintiffs obtained information pursuant to interrogatories and stipulations and conducted over 100 depositions of Defendants, their employees, and third parties. The parties also engaged in expert discovery, which included reports and depositions from experts on topics including the chemistry of JUUL products, the marketing of JUUL products, and classwide injury and damages.

After a contested motion to certify bellwether classes asserting federal and California law claims, on June 28, 2022, the Court certified four classes² of purchasers of JUUL products, appointed Class Representatives and Class Counsel, and denied related Daubert motions. *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609 F. Supp. 3d 942, 1023 (N.D. Cal. 2022) ("*Class Cert. Order*"). On July 12, 2022, Defendants filed three Rule 23(f) petitions seeking permission to appeal from the Court's order granting class certification. *See* Ninth Circuit Case Nos. 22-80061, 22-80062, and 22-80063. On October 24, 2022, the Ninth Circuit consolidated the cases and granted Defendants permission to appeal. *E.g.*, Ninth Circuit Case No. 22-80063, ECF No. 14.

² These were the **Nationwide Class** (All individuals who purchased, in the United States, a JUUL product); the **Nationwide Youth Class** (All individuals who purchased, in the United States, a JUUL product and were under the age of eighteen at the time of purchase); the **California Class** (All individuals who purchased, in California, a JUUL product); and the **California Youth Class** (All individuals who purchased, in California, a JUUL product and were under the age of eighteen at the time of purchase).

On May 18, 2020, the Court appointed Thomas J. Perelli as Settlement Master, who oversaw a years-long mediation process that led to the Class Settlement. Under the Settlement, the Class will receive \$255 million in exchange for a release of the Settlement Class Released Claims. The settlement does not include Altria Group, Inc., and related companies, so no class or individual claims against those entities will be released.³

On January 30, 2023, the Court granted Class Plaintiffs' motion for preliminary approval of the Class Action Settlement, conditionally certifying the Settlement Class, appointing Epiq Systems, Inc., as the Settlement Administrator, and approving the Notice Plan and directing notice to be provided to Class Members. ECF No. 3779 ("Preliminary Approval Order").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

This court has jurisdiction under 28 U.S.C. § 1332(d)(2).

B. Notice and Administration

Following the Court's Preliminary Approval Order, the Class Settlement Administrator established a settlement website at www.JUULclassaction.com, which includes: the long-form notice (explaining the procedures for Settlement Class Members to submit claims, object, or exclude themselves), a contact information page that includes address and telephone numbers for the Class Settlement Administrator and Class Counsel, the Class Settlement Agreement, the Preliminary Approval Order, online and printable versions of the Claim Form and the opt out forms, and answers to frequently asked questions. In addition, the motion papers filed in connection with the Class Settlement, and Class Plaintiffs' application for Attorneys' Fees and Expenses and Service Awards were placed on the settlement website after they were filed (which was before the opt out and objection deadline). The Class Settlement Administrator also operated a toll-free number for Settlement Class Member inquiries.

Notice of the Settlement was provided by: (1) direct notice via email to those Settlement

³ In separate agreements, JLI has resolved the claims brought by other claimants in the MDL, including individuals who asserted claims for personal injury, school district and local government entities, and Native American tribal entities.

1 Class Members for whom an email address was available; (2) direct notice via postcard mailed to
 2 those Settlement Class Members for whom a physical mailing address was available, but for
 3 whom an email address was not available; (3) publication notice of the Settlement, which
 4 comprised 427 million impressions, targeted at likely Settlement Class Members served across
 5 relevant internet websites and social media platforms; and (4) publication on the settlement
 6 website.

7 In total, the Notice Plan is estimated to have reached at least 80% of Settlement Class
 8 Members. *See, e.g., Ellison v. Steven Madden, Ltd.*, No. CV115935PSGAGRX, 2013 WL
 9 12124432, at *3 (C.D. Cal. May 7, 2013) (approving a notice plan reaching 77%); *In re:*
 10 *Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL
 11 5338012, at *9 (N.D. Ohio Sept. 23, 2016) (approving notice plan reaching approximately 77.5
 12 percent of Class Members).

13 The Court finds that the Notice Plan provided the best practicable notice to the Settlement
 14 Class Members and satisfied the requirements of due process.

15 Settlement Class Members were given until July 14, 2023, to object to or exclude
 16 themselves from the proposed Class Settlement. X Settlement Class Members timely submitted
 17 objections and X individuals timely submitted requests to be excluded from the Settlement Class.
 18 As of DATE, X Claim Forms have been received by the Class Settlement Administrator.

19 C. Certification of the Settlement Class

20 For purposes of the Class Settlement only and this Final Approval Order and Judgment,
 21 Class Plaintiffs have moved to certify the following Settlement Class: “All individuals who
 22 purchased, in the United States, a JUUL Product from brick and mortar or online retailers before
 23 December 6, 2022.” Excluded from the Settlement Class are: (a) the judges in this MDL and any
 24 other judges that have presided over the litigation, including the coordinated proceeding captioned
 25 *JUUL Labs Product Cases*, Judicial Counsel Coordination Proceeding No. 5052, pending in the
 26 Superior Court of California, County of Los Angeles, Department 11, Settlement Master Thomas
 27 J. Perrelli, and their staff, and immediate family members; (b) Defendants, their employees,
 28

officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies; (c) Class Counsel and their employees; (d) any individuals who purchased JUUL Products only secondarily from non-retailers; and (e) all individuals who timely and properly excluded themselves from the Settlement Class.⁴

The Court previously certified a nearly identical nationwide class under RICO and a class of California JUUL purchasers under California law. The Settlement Class is co-extensive with the certified class, except that the claims of the Settlement Class apply to JLI on a nationwide basis, includes an end date for the Settlement Class (as is necessary to settlement administration), and includes purchases of JUUL accessories and products in addition to JUUL pods and devices. The slight differences between the litigation class and the proposed Settlement Class do not alter the Court's previous analysis, except insofar as the predominance and superiority analysis prerequisites operate differently and are easier to meet in the settlement context. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019). The Court finds that the Settlement Class largely overlaps with those previously certified by the Court and that, for settlement purposes only, there is a sound basis for expanding the scope of the previously certified classes to encompass all the Settlement Class Released Claims against JLI and the Released Parties.

The Court independently finds that the Settlement Class meets the requirements of Rule 23 as set forth below:

a. Members of the Settlement Class are so numerous as to make joinder impracticable. JLI's direct sales data, which covers only a portion of the Settlement Class, contains over two million unique names, meaning that the proposed Settlement Class contains millions of members.

b. There are questions of law and fact common to the Settlement Class. Those questions include whether the Defendants' conduct was likely to mislead a reasonable consumer, whether the conduct would have been material to a reasonable consumer, the existence of a RICO

⁴ The list of individuals who timely and properly submitted exclusion requests and are therefore not members of the Settlement Class was filed with the Court on July 21, 2023.

enterprise, the existence of a pattern of racketeering, the existence of a scheme to defraud, whether Defendants' conduct was unfair and/or unconscionable, whether JUUL products were fit for their ordinary use, and the appropriate measure of aggregate damages.

c. Common questions predominate over any questions affecting only individual Settlement Class Members for purposes of the Class Settlement because the Defendants' conduct will drive the litigation. That is particularly true in the settlement context. As the Ninth Circuit has held, "predominance is easier to satisfy in the settlement context." *Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020); *see also Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 304 n. 29 (3d Cir. 2011) (en banc) (courts are "more inclined to find the predominance test met in the settlement context") (internal quotation marks and alteration omitted). That is because "[s]ettlement may 'obviate the need to litigate individual issues that would make a trial unmanageable,' making common questions more important in the relative analysis." *Jabbari*, 965 F.3d at 1005-06 (quoting *Hyundai*, 926 F.3d at 558). One issue that takes on significantly less importance in a settlement class is the particulars of the state law being applied. *See id.* at 1007 ("For purposes of a settlement class, differences in state law do not necessarily, or even often, make a class unmanageable."). Even in the litigation context, "[w]hen 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as . . . some affirmative defenses peculiar to some individual class members.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016) (quoting 7AA C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1778, at 123-24 (3d ed. 2005)). Under California law, for example, class members would not need to show their individual reliance, and Class Plaintiffs' California law claims focus on whether Defendants' conduct would have misled and have been material to a reasonable consumer. *See Krommenhick v. Post Foods*, 334 F.R.D. 552, 564, 565, 575 (N.D. Cal. 2020) (discussing the objective nature of the key inquiries under the UCL, CLRA, and FAL). Class Plaintiffs may, for example, be able to demonstrate classwide injury and damages through a price premium theory. *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1104 (N.D.

1 Cal. 2018) (“It is well-established that the ‘price premium attributable to’ an alleged
2 misrepresentation on product labeling or packaging is a valid measure of damages in a mislabeling
3 case under the FAL, CLRA, and UCL.”).

4 d. Class Plaintiffs’ claims and the defenses thereto are typical of the claims of
5 the Settlement Class Members and the attendant defenses for purposes of the Class Settlement.
6 Class Plaintiffs allege that Defendants misled JUUL purchasers, engaged in a fraudulent scheme
7 to enhance JUUL sales, and engaged in unfair conduct to market JUUL products to minors. Those
8 theories of liability and injury are the same for Class Plaintiffs and members of the Settlement
9 Class. Class Plaintiffs’ allegation that JUUL products are not fit for their ordinary use is based on
10 the design of JUUL products and is thus the same for Class Plaintiffs and members of the
11 Settlement Class.

12 e. Class Plaintiffs and their counsel have fairly and adequately protected the
13 interests of the Settlement Class Members in this action with respect to the Class Settlement and
14 will continue to do so. Each Class Plaintiff has the same goal as members of the proposed
15 Settlement Class (*i.e.*, holding Defendants accountable for their alleged deceptive and youth-
16 focused marketing). Class Plaintiffs’ interests are aligned with, and not in conflict with, those of
17 Settlement Class Members. The record reflects that each Class Plaintiff has dedicated substantial
18 time and effort to this litigation by working with their counsel; reviewing pleadings; responding to
19 discovery; searching for, collecting, and producing documents; and preparing to sit for
20 depositions, among other things.

21 f. A class action is superior to all other available methods for fairly and
22 efficiently resolving this action. While individuals with personal injury claims may be motivated
23 to file individual personal injury suits, the same is not true with respect to claims for economic
24 losses. No plaintiffs have expressed a desire to individually litigate their economic loss claims; in
25 fact, plaintiffs sought to litigate their economic loss claims as class actions instead of through their
26 separate personal injury complaints. Given the substantial overlap among all class members’
27 claims, it is highly desirable to concentrate economic loss claims in a single proceeding.

1 The Court appoints Bradley Colgate, Joseph DiGiacinto on behalf of C.D., Lauren Gregg,
 2 Tyler Krauel, and Jill Nelson on behalf of L.B. as the Settlement Class Representatives and Dena
 3 Sharp of Girard Sharp LLP as Class Counsel.

4 **D. Final Approval of Settlement**

5 A court may approve a proposed class action settlement only “after a hearing and on
 6 finding that it is fair, reasonable, and adequate after considering whether: (A) the class
 7 representatives and class counsel have adequately represented the class; (B) the proposal was
 8 negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i)
 9 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
 10 distributing relief to the class, including the method of processing class-member claims; (iii) the
 11 terms of any proposed award of attorney's fees, including timing of payment; and (iv) any
 12 agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members
 13 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).⁵ In reviewing the proposed settlement,
 14 the Court need not address whether the settlement is ideal or the best outcome, but only whether
 15 the settlement is fair, free of collusion, and consistent with plaintiff’s fiduciary obligations to the
 16 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

17 For the reasons further detailed below, the Court finds that the proposed settlement is fair,
 18 reasonable, and adequate under the Rule 23(e)(2) factors. Defendants dispute whether the

19 ⁵ Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had
 20 enumerated a similar list of factors to consider in evaluating a proposed class settlement. *See*
 21 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following
 22 factors: “(1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely
 23 duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4)
 24 the amount offered in settlement; (5) the extent of discovery completed and the stage of the
 25 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
 26 participant; and (8) the reaction of the class members to the proposed settlement”). In the notes
 27 accompanying the Rule 23 amendments, the Advisory Committee explained that the amendments
 28 were not designed “to displace any factor, but rather to focus the court and the lawyers on the core
 concerns of procedure and substance that should guide the decision whether to approve the
 proposal.” Accordingly, this Court applies the framework of Rule 23 while “continuing to draw
 guidance from the Ninth Circuit’s factors and relevant precedent.” *Hefler v. Wells Fargo & Co.*,
 2018 WL 6619983, at *4 (N.D. Cal. Dec. 17, 2018), *aff’d sub nom. Hefler v. Pekoc*, 802 F. App’x
 285 (9th Cir. 2020).

1 manufacture, marketing, advertising, and sale of the JUUL products was unlawful, unfair,
 2 deceptive and/or in violation of other state and federal laws. There would also have been a battle
 3 of the experts regarding consumer understanding of JUUL marketing and advertising and
 4 regarding the computation of restitution/damages, if any. Further, JLI was prepared to assert an
 5 arbitration defense against a large portion of the class. Proceeding to trial as against JLI and the
 6 Released Parties would have been costly, recovery was not guaranteed, and there was the
 7 possibility of protracted appeals and the potential for bankruptcy.

8 Counsel for all Parties are highly experienced; Class Counsel provided a detailed
 9 declarations explaining why they supported the Class Settlement, and there is no factual basis to
 10 support any allegation of collusion or self-dealing.

11 **1. Settlement Class Representatives and Class Counsel Have Adequately** 12 **Represented the Settlement Class**

13 In the Preliminary Approval Order, this Court found that the Settlement Class
 14 Representatives and Class Counsel adequately represented the interests of the certified classes.
 15 This Court has seen no evidence to contradict its previous finding, and the Court reconfirms it
 16 here with respect to Settlement Class Representatives and Class Counsel, who have vigorously
 17 prosecuted this action through discovery, motion practice, mediation, and preparations for trial.
 18 Class Counsel “possessed sufficient information to make an informed decision about settlement.”
 19 *Hefler*, 2018 WL 6619983, at *6.

20 **2. The Class Settlement Was Negotiated at Arm’s Length**

21 The Court finds that the Class Settlement is the product of serious, non-collusive, arm’s
 22 length negotiations by experienced counsel with the assistance of a well-respected, experienced,
 23 Court-appointed Settlement Master, Thomas J. Perrelli. *See, e.g., G. F. v. Contra Costa Cty.*, 2015
 24 WL 4606078, at *13 (N.D. Cal. July 30, 2015) (noting that “[t]he assistance of an experienced
 25 mediator in the settlement process confirms that the settlement is non-collusive”); *Hefler*, 2018
 26 WL 6619983, at *6 (noting that the settlement “was the product of arm’s length negotiations
 27 through two full-day mediation sessions and multiple follow-up calls” supervised by a mediator).
 28

1 Before agreeing on the terms of the Class Settlement, the parties engaged in extensive factual
2 investigation, which included dozens of depositions, the production and review of millions of
3 pages of documents, extensive written discovery, robust motion practice, and expert discovery.
4 The record was thus sufficiently developed that the parties were fully informed as to the viability
5 of the claims and able to adequately evaluate the strengths and weaknesses of their respective
6 positions and risks to both sides if the case did not settle.

7 The Court has independently and carefully reviewed the record for any signs of collusion
8 and self-dealing and finds no such signs. Specifically, the Court finds that Class Counsel did not
9 compromise the claims of the Settlement Class in exchange for higher fees as there has been no
10 agreement concerning attorneys' fees or otherwise disadvantaging the Settlement Class.

11 **3. The Cash Payments Provide Adequate Recovery to the Class**

12 In the Rule 23(e) analysis, "[t]he relief that the settlement is expected to provide to class
13 members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018
14 amendment. "The Court therefore examines 'the amount offered in settlement.'" *Hefler*, 2018 WL
15 6619983, at *8 (quoting *Hanlon*, 150 F.3d at 1026).

16 JLI has agreed to pay \$255 million on behalf of itself and the Released Parties, which will
17 be used as a common fund to pay cash benefits to Settlement Class Members as set forth in the
18 Plan of Allocation. Settlement Class Members who submit Eligible Claims will therefore have the
19 opportunity to receive substantial payments corresponding to their JUUL purchases. In addition,
20 because the Class Settlement Agreement does not release claims against Defendant Altria and
21 related entities (which will instead be the subject of a forthcoming filings), there is a distinct
22 possibility of additional recoveries to benefit the Settlement Class. Based on the record evidence
23 and argument the parties submitted in connection with the Class Settlement, as well as the
24 familiarity the Court has developed with this case, the Court finds that this monetary recovery is
25 fair, reasonable, and adequate given the risks of proceeding to trial and the recovery potentially
26 available to Settlement Class Members if the Class Representatives had prevailed at trial.

4. The Risk of Continuing Litigation

The amount provided for in the Class Settlement is also reasonable in light of the risks of continued litigation. The Ninth Circuit has, for example, granted the Defendants' Rule 23(f) petitions and Class Plaintiffs therefore face the risk that the Ninth Circuit would reverse or modify the Court's class certification decision. There were also substantial questions as to whether Class Plaintiffs would be able to prove at trial that JLI's and other parties' practices were fraudulent, unlawful, or unfair, and that JLI and other defendants should be held liable. Both sides believed they had persuasive facts to support their positions, and there is limited precedent available regarding the parties' competing theories. Trial would have involved a battle of experts and their analyses as to whether the marketing, advertising, and sales of JUUL products were unlawful, unfair, or fraudulent, the methods of calculating damages/restitution, and ultimately what damages and/or restitution, if any, should be awarded. JLI was prepared to assert an arbitration defense against a large portion of the class. And even if Class Plaintiffs succeeded at trial, appeals would undoubtedly have followed. Finally, there was the looming risk that JLI may file for bankruptcy protection, thereby slowing or even eliminating any recovery.

5. Attorneys' Fees and Expenses

The parties have reached no agreement regarding the amounts of attorneys' fees, expenses, and service awards to be paid. *See, e.g., Hyundai*, 926 F.3d at 569-70 (rejecting fairness objection because class counsel "did not reach an agreement with the automakers regarding the amount of attorney's fees to which they were entitled," which "[p]rovid[es] further assurance that the agreement was not the product of collusion"). The payment of attorneys' fees, expenses, and service awards, if any, is subject to approval of the Court based on a finding that such amounts are fair and reasonable.

6. Other Agreements

The Court is required to consider "any agreements required to be identified under Rule 23(e)(3)." The Court has reviewed the Class Settlement Agreement and relevant accompanying materials and has been made aware that JLI (on behalf of itself and the Released Parties) has

1 agreed to fund parallel settlement programs to provide recoveries for other claimants in this MDL
2 and the parallel JCCP proceedings, including individuals who asserted claims for personal injury,
3 and school district and local government entities, as well as Native American tribal entities. Under
4 the supervision of Special Master Perrelli, the amount of the Class Settlement Fund was
5 negotiated separately from the amounts for the other settlements, with co-lead counsel Dena Sharp
6 representing the Class, and the other co-lead counsel in the MDL representing interests of the
7 personal injury and government entity plaintiffs. The Court is also aware that the settlement
8 provides for the creation of a trust to hold assets on behalf of the Class, which benefits the
9 Settlement Class, as do the protections the settlement contemplates in the event of bankruptcy or
10 non-payment.

11 Certain of the Class Plaintiffs have asserted personal injury claims, and thus will be
12 eligible to apply to share in the amounts allocated to the resolution of personal injury claims.
13 Personal injury claimants will receive no favorable treatment compared to other class members.
14 All personal injury claims will be paid from funds set aside to resolve personal injury claims,
15 while the economic loss claims asserted by the Settlement Class will be paid from the Net
16 Settlement Fund. Only after a diligent effort to identify all class members and distribute to them
17 the full amount of the Net Settlement Fund will the parties confer regarding the disposition of any
18 residual funds, the distribution of which would be subject to the Court's approval and a finding
19 that the parties first exhausted all reasonable efforts to distribute remaining funds to Settlement
20 Class members. Under the terms of the Class Settlement Agreement, the Net Settlement Fund is
21 non-reversionary and no portion of the Gross Class Settlement Amount or Net Settlement Fund
22 will revert to JLI or any other Released Party.

23 **7. The Plan of Allocation is Reasonable and Treats Class Members**
24 **Equitably Relative to Each Other**

25 The claims process and distribution method are reasonable. Settlement Class Members
26 who seek benefits under the Class Settlement need only submit a simple claim form, and the form
27 is prepopulated if their purchase information is known to JLI because they made purchases on
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1 JLI's website. *See* 4 William B. Rubenstein, *Newberg on Class Actions* § 12:18 (5th ed. 2011)
 2 (noting that "a claiming process is inevitable" in certain settlements such as those involving
 3 "defective consumer products sold over the counter"). Further, the claim process is no more
 4 onerous than would be required after trial.

5 The method for distributing funds to Eligible Claimants is also reasonable. "[A]n
 6 allocation formula need only have a reasonable, rational basis, particularly if recommended by
 7 experienced and competent counsel." *Rieckborn v. Velti PLC*, 2015 WL 468329, at *8 (N.D. Cal.
 8 Feb. 3, 2015) (citation omitted). The Court finds that the Plan of Allocation is fair, reasonable, and
 9 adequate and is hereby approved.

10 Under the Plan of Allocation, all Settlement Class Members who submit an Eligible Claim
 11 will receive cash payments based on their *pro rata* allocation of the Net Settlement Fund. The
 12 Plan of Allocation provides higher payments for those who first purchased in the earlier years of
 13 the class period or when they were underage. *See In re MyFord Touch Consumer Litig.*, No. 13-
 14 cv-03072-EMC (N.D. Cal. Mar. 28, 2019), ECF No. 526 at 4-5 (granting approval of settlement
 15 plan that pays a lower dollar amount in relation to the comparative weakness of certain claims).
 16 The larger payments for those who made their initial purchases earlier is consistent with the
 17 evidence about changes in relevant warnings over time, which led the Court to note in its class
 18 certification order that:

19 JLI will be free to argue at the appropriate points (on summary judgment, trial, post-
 20 trial) that a reasonable consumer who purchased after a certain date could not have
 21 been misled by its representations or omissions about its products given the other
 22 information in the market or given the addition of the 'black-box' nicotine warning
 on JUUL's packaging.

23 *Class Cert. Order*, 609 F. Supp. at 990. The enhanced payments for those who began purchasing
 24 when underage is based on Class Plaintiffs' full refund theory of recovery as to their youth
 25 targeting claims, as opposed to the price premium damages model applicable to other claims. *See*
 26 *id.* at *17 (holding "Plaintiffs' full refund model, with respect to the Youth Classes, supports
 27 certification" because such sales were allegedly illegal). Further, it is rational to provide
 28

enhancements for all purchases by such persons, even after the warnings were augmented or the purchasers reached adulthood, because of the addictive nature of JUUL Products.

Setting a cap on the recoveries by Claimants who lack proof of purchase while claims that are accompanied by proof of purchase will not be capped is also reasonable. The use of a cap for Claimants without proof of purchases ensures a fair distribution and serves to disincentivize illegitimate or exaggerated claims. *See, e.g., In re Groupon, Inc.*, 2012 WL 13175871, at *6 (S.D. Cal. Sep. 28, 2012) (holding requirement of a voucher number or other proof of purchase serves “to ensure that money is fairly distributed for valid claim.”) Such a cap is a common feature of consumer class action settlements. *See, e.g., Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at *30 (N.D. Cal. Feb. 5, 2020) (finally approving settlement with cap on no-proof claims); *Fitzhenry-Russell v. Coca-Cola Co.*, 2019 WL 11557486, at *7 (N.D. Cal. Oct. 3, 2019) (approving settlement with cap for claims without proof of purchase, stating that such a claim process “would be no different than that required after trial”); *Bruno v. Quten Research Inst., LLC*, 2013 WL 990495, at *2 (C.D. Cal. Mar. 13, 2013) (finally approving settlement with claims limited to \$10.65 (*e.g.*, 3 bottles) without proof of purchase, with no cap on claims accompanied by a proof of purchase, for example a receipt or product packaging).

Settlement Class Members can elect their preferred method of payment, including mailed check, direct deposit, PayPal, or prepaid MasterCard, or Amazon gift card. After an initial distribution, if there are substantial funds from uncashed payments and it is economically rational to do so, the monies will be redistributed to the Settlement Class Members who made claims and accepted their initial distribution payments where economically feasible. Only if residual funds remain thereafter will they be otherwise distributed, subject to the Court’s approval.

8. The Response of Class Members

Out of an estimated minimum of X Settlement Class Members, there were X opt-outs and X objections. In comparison, as of DATE Settlement Class Members have submitted an estimated X valid Claims. These figures represent a positive response. *See Churchill Village, LLC v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (explaining that a court may infer

appropriately that a class action settlement is fair, adequate, and reasonable when few class members object to it); *Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *16 (N.D. Cal. Mar. 24, 2017) (holding “the indisputably low number of objections and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude that the reaction to settlement by the class has been favorable”); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.”); *see also, e.g., In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at *4 (N.D. Cal. Aug. 25, 2016) (stating that, “[i]n an analysis of settlements where notice relied on media notice exclusively, the claims rate ranged between 0.002% and 9.378%, with a median rate of 0.023%”).

E. Releases and Effect of This Order

1. Releases by Settlement Class Members

By operation of this Order and Judgment, on the date specified in the Class Settlement Agreement, Settlement Class Members, including the Settlement Class Representatives, release and forever discharge and hold harmless the Released Parties of and from any and all Settlement Class Released Claims which the Settlement Class Member ever had, now have, or will have in the future. The Settlement Class Released Claims shall not release any Settlement Class Member’s: (i) claim(s) for personal injury against the Released Defendants; (ii) claims asserted in *In re Juul Labs, Inc. Antitrust Litigation*, Case No. 3:20-cv-02345-WHO that arise from alleged anticompetitive conduct; (iii) claim(s) against any non-settling Defendants; (iv) claim(s) arising from the purchase of any JUUL product after December 6, 2022; or (v) right(s) to enforce the Class Settlement Agreement. Settlement Class Members shall not release their claims if either the Effective Date does not occur, or the Gross Settlement Amount is not paid. The scope of the Released Claims is consistent with the economic loss claims pled in the class action complaint.

2. Waiver of Provisions of California Civil Code § 1542

By operation of this Order and Judgment, with respect to the Settlement Class Released Claims, Class Plaintiffs, the Released Parties, and Settlement Class Members shall be deemed to

1 have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
2 benefits conferred by any law of any state of the United States, or principle of common law or
3 otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil
4 Code, which provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
6 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
7 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
8 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR
9 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
10 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 Class Plaintiffs, JLI (on behalf of itself and the Released Parties), and Settlement Class
12 Members understand and acknowledge the significance of these waivers of California Civil Code
13 section 1542 and any other applicable federal or state statute, case law, rule or regulation relating
14 to limitations on releases.

15 The Settlement Class Released Claims of the Settlement Class are dismissed with
16 prejudice and without costs. Accordingly, the Second Amended Consolidated Class Action
17 Complaint and any other complaints in the litigation asserting Settlement Class Released Claims
18 are hereby dismissed with prejudice and without costs.

19 **3. Compliance with Class Action Fairness Act**

20 The record establishes that the Class Settlement Administrator served the required notices
21 under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required
22 by 28 U.S.C. § 1715(b)(1-8). ECF No. 3742.

23 **F. Costs of Administering the Class Settlement**

24 The Settlement Administrator received over three million claims, which exceeds the outer
25 bounds of the volume of claims that the Settlement Administrator had expected prior to
26 commencing the notice program. Based on the information provided by Class Plaintiffs, a precise
27 estimate of the costs needed to process those claims, conduct necessary follow-ups, and distribute
28 funds is unknown given the ongoing nature of the analysis of the claims.

1 Epiq and Class Counsel both anticipate that, notwithstanding the very high claims volume,
 2 Epiq will be able to complete the necessary settlement administration work for less than the
 3 \$7,000,000 proposed in the class notice. Given the uncertainty in the final amounts needed to
 4 complete settlement administration, the Court authorizes payment to Epiq of *up to* \$7,000,000.
 5 Class Counsel shall, however, only authorize payments to Epiq for actual costs incurred. Any
 6 difference between the actual costs incurred by Epiq and the \$7,000,000 approved amount shall
 7 remain a part of the Settlement Fund. Class Counsel is directed to continue to work with Epiq on
 8 methods for reducing costs and to review billing statements on a weekly basis.

9 The Court also authorizes total payment of up to \$50,000 per year for previously incurred
 10 and future costs related to the administration of the Trust (including all expenses and
 11 compensation payable under the terms of the Trust). Payments up to such amount are reasonable
 12 given the role of the Trust in protecting the Class Settlement Fund from being subject to reduction
 13 or clawback in the event JLI were to file for bankruptcy. In no event shall payments related to the
 14 administration of the Trust exceed the Class Settlement Fund's share of the actual, documented
 15 out-of-pocket costs for administering the Trust.

16 **G. Other Effects of This Order**

17 No action taken by the parties, either previously or in connection with the negotiations or
 18 proceedings connected with the Class Settlement, shall be deemed or construed to be an admission
 19 of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or
 20 admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other
 21 party. Neither the Class Settlement Agreement nor any act performed or document executed
 22 pursuant to or in furtherance of the Class Settlement Agreement : (a) is or may be deemed to be or
 23 may be used as an admission of, or evidence of, the validity of any claim made by the Settlement
 24 Class Members or Class Counsel, or of any wrongdoing or liability of the persons or entities
 25 released under this Order and Judgment and the Class Settlement Agreement, or (b) is or may be
 26 deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any of
 27 the persons or entities released under this Order and Judgment and the Class Settlement
 28

1 Agreement, in any proceeding in any court, administrative agency, or other tribunal. JLI's and the
2 Released Parties' agreement not to oppose the entry of this Order and Judgment shall not be
3 construed as an admission or concession that class certification was or would be appropriate in the
4 litigation outside of the context of settlement or would be appropriate in any other action.

5 Except as provided in this Order, Class Plaintiffs shall take nothing against the Released
6 Parties by the Released Claims. This Order shall constitute a final judgment binding the Released
7 Parties and Settlement Class Members with respect to the Released Claims.

8 No distributions shall be made from the Settlement Fund, or from any account holding the
9 Settlement Fund, without the written authorization of Class Counsel.

10 Defendants will have no role in, nor will they be held liable in any way for, the
11 determination of monetary relief to be accorded each Claimant. No Settlement Class Member or
12 any other person will sue or have any claim or cause of action against the Settlement Class
13 Representatives, Class Counsel or any person designated by Class Counsel, Co-Lead Counsel or
14 the Class Settlement Administrator arising from or relating to the Class Settlement, the Released
15 Claims, the litigation, or determinations or distributions made substantially in accordance with the
16 Class Settlement or Orders of the Court, including this Final Approval Order and Judgment.

17 Without affecting the finality of the judgment hereby entered, the Court reserves exclusive
18 jurisdiction over the implementation of the Class Settlement. In the event the Effective Date does
19 not occur in accordance with the terms of the Class Settlement Agreement, then this Order and
20 any judgment entered thereon shall be rendered null and void and shall be vacated, and in such
21 event, all orders and judgments entered, and releases delivered in connection herewith shall be
22 null and void and the parties shall be returned to their respective positions ex ante.

23 Without further order of the Court, the parties may agree to reasonable extensions of time
24 to carry out any provisions of the Class Settlement Agreement.

25 There is no just reason for delay in the entry of this Judgment, and immediate entry by the
26 Clerk of the Court is expressly directed.

1 Dated: _____, 2023

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4 Hon. William H. Orrick
5 U.S. District Judge
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